

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JOSEPH BENTON,

Plaintiff,

ORDER

-against-

12-CV-4885 (ILG)

STATE OF NEW YORK, et al.,

Defendants.

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ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

This Court previously issued two orders to show cause why this action — which had been languishing since October 1, 2012 — should not be dismissed for lack of prosecution pursuant to Fed. R. Civ. P. 41(b). See Order to Show Cause (Apr. 23, 2013), Electronic Case Filing (“ECF”) Docket Entry (“DE”) #4 (“4/23/13 OTSC”); Order to Show Cause (Aug. 8, 2013) (“8/8/13 OTSC”), DE #9.¹ Most recently, this Court asked for a “detailed explanation as to why plaintiff ignored the matter for almost nine months in total.” See 8/8/13 OTSC at 2. In doing so, the Court reminded plaintiff that if he failed “to fully and timely comply” with the 8/8/13 OTSC, the Court would “impose sanctions and recommend that the case be dismissed for lack of prosecution under Rule 41(b).” See id.

On August 13, 2013, plaintiff submitted his response to this Court’s query. As for the lack of prosecution in this case, plaintiff states in conclusory fashion that “[p]laintiff’s delay

¹ Due to a clerical error, the 4/23/13 OTSC was inadvertently attached to the docket entry for the 8/8/13 OTSC on ECF. However, the text portion of the 8/8/13 OTSC docket entry included the language quoted in this order, and, thus, plaintiff was on notice of the relevant portions of the Court’s 8/8/13 OTSC. The clerical error has since been corrected. Notably, plaintiff, who is obligated to open and review all court orders on ECF, did not bring this error to the Court’s attention.

was caused by law office failure.” See Affidavit in Opposition (Aug. 13, 2013) ¶ 2, DE #10. No further explication was offered. See generally id. This can hardly constitute a detailed explanation for what caused plaintiff to neglect this action for a nine-month period.

Despite plaintiff’s apparent violation of this Court’s 8/8/13 Order requiring a detailed explanation for the delay, in the interests of justice and so that plaintiff’s claims may be decided on the merits, the Court reluctantly declines to recommend dismissal at this time, especially in light of the clerical error mentioned above. See infra p. 1 n.1. Plaintiff, however, is forewarned that the Court is not inclined to further indulge plaintiff’s derelictions and severe sanctions, including dismissal, will be imposed for subsequent delays and/or violations of this Court’s orders. See 8/8/13 OTSC at 2 (plaintiff failed to timely respond to this Court’s June 20, 2013 order).

The Clerk is directed to enter this Order into the ECF system and to transmit a copy, by Federal Express, to defendant State of New York at:

Assistant Attorney General
Michael J. Keane
120 Broadway, 24th Floor
New York, NY 10271

SO ORDERED.

Dated: Brooklyn, New York
August 16, 2013

/s/ Roanne L. Mann
ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE